

## JUDGE PEGGY S. BALL

UNITED STATES OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

United States Customs House  
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(Last amended 10/17/13)

### PRACTICE STANDARDS ORDER

The following guide is applicable to most cases. However, parties should also comply with specific orders issued in individual cases because the circumstances of a case may require deviation from standard procedures.

#### GENERAL MATTERS APPLICABLE TO ALL CASES

##### Communications With The Court

1. My legal assistant, Sharon M. Hall, can be contacted at 303-844-0418.
2. The Court permits telephonic or written contact concerning administrative, scheduling and other non-substantive, routine matters. My legal assistant may be contacted for information about the status of a motion or other document, or for information about courtroom technology, trial preparation, or submission of trial exhibits.
3. All other communications with the Court should be made by the filing of pleadings, motions, applications, briefs or legal memoranda, copied to the opposing party.
4. Under no circumstances may any party or counsel communicate *ex parte* with the Court's office staff regarding substantive matters. Court staff has no authority to render legal advice or grant continuances or any other relief.

##### Applicable Rules

Those appearing before the Court must know and follow:

1. The Federal Rules of Civil Procedure;
2. The Federal Rules of Evidence;
3. The Rules of Procedure of the United States Occupational Safety and Health Review Commission ("Commission Rules"); and
4. These Practice Standards.

##### Electronic Filing

Electronic filing of documents is the Court's preferred method of filing. See Commission Rules 7(c), 29 C.F.R. § 2200.7(c) and Rule 8(g), 29 C.F.R. § 2200.8(g). Instructions for electronic filing can be found using the following address:

[http://www.oshrc.gov/publications/instructions\\_elecfileing.html](http://www.oshrc.gov/publications/instructions_elecfileing.html). All documents, including exhibits, attachments and appendices, shall be sent by email to [denveroshrcjudges@oshrc.gov](mailto:denveroshrcjudges@oshrc.gov). The email subject line should include the following information: (1) Judge Ball, (2) case title, and (3) case docket number. You may, in the alternative, follow any procedure outlined in Commission Rule 8 for the filing of documents.

**Extensions of Time and Continuances:**

Requests for extensions of time and/or continuances must be made by written motion and shall include: (1) the specific grounds for the request, (2) the date on which the parties conferred regarding the request, (3) a statement of whether the request is opposed or unopposed, and (4) a proposed substituted date.

**Trial Exhibits:**

Exhibits shall be sequentially numbered with a label placed in the lower right corner of each exhibit (and on each page thereafter, unless subsequent pages have clearly identified page numbers which can be referenced on the record). Each exhibit shall be numbered C-1, C-2, C-3, etc. for Complainant's exhibits, and R-1, R-2, R-3, etc. for Respondent's exhibits. If other parties have been recognized in the case, they should follow a similar procedure (e.g. U-1, U-2, U-3 for exhibits offered by union representatives participating in the proceeding). The proposed, pre-numbered exhibits must be securely placed in a three-ring binder, along with an index page located in the front of the binder. Each party shall create a minimum of four (4) copies of their respective exhibit notebooks: (1) one copy for Judge Ball (to be provided at trial); (2) one copy for the witness stand (which shall become the official Court copy); (3) one copy for each opposing party (which should be produced before trial pursuant to the Court's deadlines); and (4) a copy for the party offering the exhibits.

**Trial Documents** – In addition to hard copy submission of exhibits, each party shall provide to the Court an electronic copy of the exhibits (CD or flash drive) in one of the following electronic formats: Adobe Portable Document format (.pdf)(preferred) or Word (read only) Document (.doc). Materials that cannot be converted to electronic form (e.g., videotape, audiotape, etc) should be submitted to the Court in original form. Over-size documents such as overheads, charts, graphs or demonstrative exhibits may be used during court proceedings but shall also be reduced, photocopied or otherwise reproduced for submission as a paper or electronic exhibit. The electronic version of exhibits will be the official trial exhibits. Electronic trial exhibits admitted in audio or video format must be in .mp3 (audio) or .mp4 (video) format.

**Notice of Settlement:**

If the parties successfully negotiate a full resolution of their dispute, the Court must be promptly notified in writing of such resolution. If a trial has been scheduled, please notify the Court no later than **three business days prior to such trial**. A simple, concise, written notice stating full settlement has been reached is sufficient. The settlement notice must be signed by at least one party representative and served on all parties. The specific terms of settlement do not need to be included with the initial

notice, as the Court will subsequently order the parties to file a detailed settlement agreement. Partial settlement agreements are also encouraged, although they will not affect the scheduled trial date. **Telephonic notification of settlement alone is not sufficient to cancel a scheduled trial date.**

## **COURTROOM RULES AND PROCEDURES FOR ALL CASES**

Professional courtesy and civility are expected during all court appearances. Respect for the court, respect for one another, respect for witnesses, and respect for the judicial process are paramount.

- All trial proceedings and other hearings will begin promptly at their scheduled times.
- Please stand when the Judge enters or leaves the courtroom.
- Please stand when addressing the court or questioning witnesses.
- There will be no visual or verbal gestures of approval or disapproval of any witness testimony, any comments by counsel, or any rulings by the court.
- Address objections, and responses to objections, to the court. Do not direct objections, or responses to objections, to opposing counsel.
- Ask permission before approaching the witness or the bench.
- If witnesses are sequestered, attorneys and other party representatives are required to monitor the courtroom to ensure compliance with the court's exclusion order.
- All mobile phones, pagers, and laptop computers must be either turned off or placed in vibrate/silent mode while in the courtroom.
- No food, gum, or drinks (other than water) are allowed in the courtroom. For trials and other hearings conducted in Denver, water will either be provided at counsel table, or spill-proof containers of water will be permitted. In other locations, local court rules apply.
- Please advise court staff if you require disability-related accommodations

Requirements relating to specific types of proceedings are noted below:

### **I. CONVENTIONAL PROCEEDINGS**

#### **Order to Confer and Submit Joint Proposed Pre-Trial Schedule**

Upon assignment of a case the Court will issue a Pretrial Trial Conference Order, which outlines the responsibility of the parties prior to the Pretrial Trial Conference. After the initial Pretrial Conference the Court will issue a Scheduling Order setting out deadlines for completion of discovery, filing of dispositive motions and other pretrial submissions.

#### **Discovery**

Discovery deadlines and limitations will be established in the Scheduling Order. The presumptive discovery period is six months for conventional cases.

### **Motion Practice**

All motions, objections and responses shall conform to the requirements of Commission Rule 40. The parties have a “confer” requirement under Commission Rule 40. The Court will not consider correspondence or letters from counsel as proper motion practice.

See Commission Rule 40(c) for applicable time limits for filing responsive pleadings. Commission Rule 4 controls the computation of time.

No other reply or brief shall be filed without leave from the Court. Motions that are untimely, noncomplying, or filed without a certification pursuant to Commission Rule 40(a) may be denied with prejudice or stricken *sua sponte*.

Motions in limine are discouraged when they request advanced evidentiary rulings, which are typically more appropriate for the court to consider during trial. Instead, the disputed issue can be summarized briefly in a pretrial brief. If a party files a motion *in limine*, it is due fifteen days before the trial unless the Scheduling Order establishes a different timeframe. Please flag evidentiary issues in a trial brief rather than by *motion in limine*.

Dispositive Motions: Motions seeking relief pursuant to Fed.R.Civ.P. 12 or 56, are governed by the Scheduling Order and deadlines will be strictly enforced.

Motions to Exclude Expert Testimony: A party objecting to the admissibility of opinion testimony by an expert witness shall file a written motion seeking exclusion. Failure of an opponent to file such a motion, however, does not relieve the proponent of its burden to show the proffered testimony is admissible.

The motion shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) on which each opinion is challenged, e.g., relevancy, sufficiency of facts and data, or methodology. See Fed. R. Evid. 702. The deadline for filing all such motions is established in the Scheduling Order.

Upon the filing of a motion, the Court, in its discretion, may set a hearing to determine whether the challenged opinions are admissible under the relevant Federal Rules of Evidence. The setting of such hearing does not obviate the need for opposing counsel to respond to such motion. If such a hearing is ordered, the parties shall proceed as follows: the hearing will begin, if necessary, with brief opening arguments by the parties, followed immediately by the challenging party’s examination of the expert witness. The proponent will then be permitted to ask questions of the expert witness.

Pretrial Briefs are encouraged, but not required absent specific court order.

### **Trials:**

The Court will conduct a final Pre-Trial Conference approximately twenty (20) days prior to trial to address trial management issues. Counsel\Representatives who will try the case must attend.

The time frame established for the trial at the initial Pre-Trial Conference will be adhered to absent good cause. Closing arguments will generally be dispensed with in favor of the submission of a post-trial brief.

### **Post-Trial Proceedings:**

Upon receipt of the transcript, the Court shall issue a briefing order. Typically, the parties will be required to file a post-trial brief thirty days after the trial transcript is received from the court reporter. Post-trial briefs should contain each party's proposed factual findings, a discussion of whether the *prima facie* elements required to prove each alleged violation were established, a discussion of whether the *prima facie* elements required to prove each alleged affirmative defense were established, as well as a discussion of any other pertinent issues the parties believe the Court should address in its decision.

## **II. SIMPLIFIED PROCEEDINGS**

### **Applicable Law:**

All parties and party representatives in a simplified proceeding case must comply with:

1. Commission Rules of Procedure ([www.oshrc.gov/procrules/index.html](http://www.oshrc.gov/procrules/index.html)) (specifically Commission Rules 200 through 211 in Subpart M); and
2. The provisions of this Practice Guide.

### **Initial procedures:**

- a) *Disclosure to employer.*
  - 1) Within 12 working days after a case is designated for Simplified Proceedings, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B), or their equivalents.
  - 2) Within 30 calendar days after a case is designated for Simplified Proceedings, the Secretary shall provide the employer with reproductions of any photograph or videotapes the Secretary anticipates using at trial.
  - 3) Within 30 calendar days after a case is designated for Simplified Proceedings, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.
- b) *Disclosure to Secretary.*

All affirmative defenses must be disclosed no later than the Pre-hearing Conference. Except under extraordinary circumstances, any affirmative defense not raised at the Pre-Trial Conference may not be raised later. Documents relative to any Affirmative Defense shall be disclosed to the Secretary by the Pre-Trial Conference.

**Pre-Trial Conference:**

The Court conducts a telephonic Pre-Trial Conference in cases heard under Simplified Procedure. At such conference the parties should be prepared to discuss:

- a) Settlement of the Case;
- b) Narrowing of the issues (beyond those framed by the citations);
- c) Possible agreement of issues and facts;
- d) Affirmative Defenses;
- e) Discussion of potential witnesses, including expert witnesses;
- f) Trial Date
- g) Trial Location

**Post-Trial Procedure:**

If any party requests to submit a brief in lieu of closing argument, such request must be made prior to the closing of trial.

**III. SETTLEMENT CONFERENCE PROCEEDINGS**

As to any case assigned to Judge Ball for settlement proceedings, either voluntary or mandatory, each party will provide to the Court a confidential statement of the issues in controversy and the party's factual predicate and legal position regarding each issue.

If any discovery is sought in preparation for the Settlement Conference, a request must be filed and copied to all opposing parties or counsel, indicating what discovery is requested and why it is needed prior to Settlement Conference.

All confidential settlement statements and documents submitted in support of settlement will be kept confidential and destroyed at the end of the settlement process. Confidentiality will be maintained as to information disclosed to the Court.

**Failure to Comply:**

All parties and party representatives must comply literally with the provisions of this Practice Guide. Failure to comply may result in sanctions pursuant to Commission Rule 101.